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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/972,381
Filing Date: October 05, 2001
Appellant(s): FAHEY ET AL.

Roland K. Bowler II
For Appellant

SUPPLEMENTAL EXAMINER'S ANSWER

This is in response to the appeal brief filed 27 September 2006 appealing from the
Office action mailed 02 June 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

A substantially correct copy of appealed claim 14 appears on page 18 of the Appendix to the appellant's brief. The minor errors are as follows: The claim should be identified as previously presented.

Claims 1 – 13 and 15 – 37 in the appendix are correct.

(8) Evidence Relied Upon

2002/0170415

Hruska et al.

11-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 – 37 are rejected under 35 U.S.C. 102(e) as being anticipated by Hruska (U.S. Patent Application Publication 2002/0170415).

Regarding **Claim 1**, Hruska discloses:

A method for creating a polyphonic audio mix on a handheld mobile wireless communication device having soundtrack data set file stored thereon (abstract), comprising:

entering first reference data for a first soundtrack of the soundtrack data set file into an audio mix data reference file by selecting the first soundtrack (i.e. a configuration

of musical parts, patterns and MIDI channel assignments (*soundtrack data set file*); Fig. 1, a configuration and control grid data file, the file including data on when and how to playback the information from the pieces disclosed in Fig. 1 (*audio mix data reference file*); Fig. 2, the user creates the control file; paragraph 38; the control file containing data such as solo pattern assignment; (*entering first reference data*); Fig. 2))

entering second reference data for a second soundtrack of the soundtrack data set file into the audio mix data reference file by selecting the second soundtrack (the process above is done again for other instruments, such as drums, and bass; Fig. 2);

the audio mix data reference file having the first and second reference data representative of a user defined polyphonic audio mix (i.e. the control file is user created; paragraph 38 and Fig. 3)

storing the audio mix data reference file having the first and second reference data on the handheld mobile wireless communication device separately from the soundtrack data set file (i.e. the MIDI sequence and control files are loaded into memory and then can be downloaded to the mobile device; paragraphs 38 – 40).

Furthermore in addition to the elements stated above, Hruska discloses the following, which is considered to be applicable to the claimed invention:

Users are allowed to rearrange which parts and which part patterns are playing at any given time, what MIDI instruments are assigned to the given parts and patterns, the tempo of the song, the volume of the parts and patterns, the notes of the parts and patterns and a variety of other MIDI effects such as note duration or hold, grace notes,

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pitch bend, chord creation, chord inversion, and accents; paragraph 20; and also see further paragraph 88.; and also see further paragraph 88.

Regarding **Claims 2, 11 and 17**, in addition to the elements stated above regarding claims 1, 10 and 16, Hruska further discloses:

entering first time data associated with the first reference data into the audio mix data reference file, entering second time data associated with the second reference data into the audio mix data reference file (i.e. the data as to when the parts are to be played and muted, the solo, harmony... etc in given in the values column in the form of A, a, B, b and -, thus indicating a time when they data is to be reproduced; Fig. 2).

Regarding **Claims 3 and 12**, in addition to the elements stated above regarding claims 1 and 10, Hruska further discloses:

entering tempo data associated with the user defined polyphonic audio mix into the audio mix data reference file (i.e. in the last line of Fig. 2, there is song tempo data in BPM).

Regarding **Claim 4**, in addition to the elements stated above regarding claim 1, Hruska further discloses:

entering reference soundtrack data into the audio mix data reference file (i.e. the user creates the control file; paragraph 38; the control file containing data such as solo pattern assignment which originates form the data in Fig. 1; see Fig. 2).

Regarding **Claim 5**, in addition to the elements stated above regarding claim 1, Hruska further discloses:

entering the first reference data by selecting the first soundtrack (i.e. entering the solo pattern assignment; Fig. 2);

entering second reference data by selecting the second soundtrack while the first soundtrack is playing (i.e. entering the drum assignment; Fig. 2 and the control parameters can be rearranged or changed during operation; paragraph 24);

playing the second soundtrack with the first soundtrack after selecting the second soundtrack (i.e. if the drum assignment is defined with a value that indicates it is to be played at the current time it is implicit that this will occur; Fig. 2).

Regarding **Claim 6**, in addition to the elements stated above regarding claim 1, Hruska further discloses:

entering the first reference data by selecting the first soundtrack (i.e. entering the solo pattern assignment; Fig. 2);

entering first effect reference data for a first soundtrack effect of the soundtrack data set file by selecting the first soundtrack effect while the first soundtrack is playing,

playing the first soundtrack effect with the first soundtrack upon selecting the first soundtrack effect (i.e. users are allowed to rearrange which parts and which part patterns are playing at any given time, what MIDI instruments are assigned to the given parts and patterns, the tempo of the song, the volume of the parts and patterns, the

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notes of the parts and patterns and a variety of other MIDI effects such as note duration or hold, grace notes, pitch bend, chord creation, chord inversion, and accents; paragraph 20; and also see further paragraph 88. and also see further paragraph 88).

Regarding **Claim 7**, in addition to the elements stated above regarding claim 1, Hruska further discloses:

integrating the audio mix data reference file and the soundtrack data set file into a common audio format file (i.e. the MIDI file, control data file or any combination thereof is downloaded to the mobile device; paragraph 40).

Regarding **Claims 8, 13 and 15**, in addition to the elements stated above regarding claims 1, 10 and 14, Hruska further discloses:

irreversibly integrating the audio mix data reference file and the soundtrack data set file into a common audio format file (i.e. the MIDI sequence data and control file may be combined and rendered into a standard MIDI file; paragraph 38).

Regarding **Claims 9 and 20**, in addition to the elements stated above regarding claims 1 and 19, Hruska further discloses:

playing the user defined polyphonic audio mix on the handheld mobile wireless communication device by playing the first and second soundtracks of the soundtrack data set file referenced by the first and second reference data in the audio mix data

reference file (i.e. once the music content data is on the mobile device the end user can initiate playback; paragraph 43).

Regarding **Claim 10**, Hruska discloses:

A method for playing a polyphonic audio mix on a handheld mobile wireless communication device having a soundtrack data set file stored therein (abstract) comprising:

playing a first soundtrack of the soundtrack data set file referenced in an audio mix data reference file (in addition to the elements stated above regarding claim 1, Hruska further discloses once the music content data is on the mobile device the end user can initiate playback; paragraph 43),

playing a second soundtrack of the soundtrack data set file referenced in an audio mix data reference file (in addition to the elements stated above regarding claim 1, Hruska further discloses once the music content data is on the mobile device the end user can initiate playback; paragraph 43),

the audio mix data reference file devoid of soundtrack data of the soundtrack data set file (the control file in Fig. 2 does not include the musical elements of the file in Fig. 1),

the audio mix data reference file stored separately from the soundtrack data set file on the handheld mobile wireless communication device (i.e. the MIDI file, control data file or any combination thereof is downloaded to the mobile device; paragraph 40).

Furthermore in addition to the elements stated above, Hruska discloses the following, which is considered to be applicable to the claimed invention:

Users are allowed to rearrange which parts and which part patterns are playing at any given time, what MIDI instruments are assigned to the given parts and patterns, the tempo of the song, the volume of the parts and patterns, the notes of the parts and patterns and a variety of other MIDI effects such as note duration or hold, grace notes, pitch bend, chord creation, chord inversion, and accents; paragraph 20; and also see further paragraph 88.; and also see further paragraph 88.

Regarding **Claim 14**, in addition to the elements stated above regarding claims 8 and 10, Hruska further discloses:

uploading the common audio format file from the handheld mobile wireless communication device (i.e. it also allows for rendering a song to a standard MIDI file and sending it to a friend with a text message; paragraph 88).

Regarding **Claim 16**, in addition to the elements stated above regarding claim 16, Hruska further discloses:

before integrating, creating the audio mix by entering first reference data for the first soundtrack into the audio mix data reference file and by entering second reference data fro the second soundtrack into the audio mix data reference file (i.e. Fig. 2 is created before it is stored and played back; the data files will reside on a computer-readable medium of one form or another; paragraphs 40 and 41).

Regarding **Claim 18**, Hruska discloses:

A method for a polyphonic audio mix on a handheld mobile wireless communication device (abstract), comprising:

- selecting a first soundtrack (i.e. entering the solo pattern assignment; Fig. 2),
- playing the first soundtrack upon entering the first soundtrack;
- selecting a second soundtrack while playing the first soundtrack;
- playing the second soundtrack upon selecting the second soundtrack while playing the first (i.e. users are allowed to rearrange which parts and which part patterns are playing at any given time, what MIDI instruments are assigned to the given parts and patterns, the tempo of the song, the volume of the parts and patterns, the notes of the parts and patterns and a variety of other MIDI effects such as note duration or hold, grace notes, pitch bend, chord creation, chord inversion, and accents; paragraph 20; and also see further paragraph 88.).

Regarding **Claim 19**, in addition to the elements stated above regarding claim 18, Hruska further discloses:

A soundtrack data set file including the first and second soundtracks stored on the handheld mobile wireless communication device (i.e. the MIDI file, control file or any combination is downloaded to the mobile device; paragraph 40),

entering first reference data for the first soundtrack of the soundtrack data set file into an audio mix data reference file upon selecting the first soundtrack (i.e. a

configuration of musical parts, patterns and MIDI channel assignments (*soundtrack data set file*); Fig. 1, a configuration and control grid data file, the file including data on when and how to playback the information from the pieces disclosed in Fig. 1 (*audio mix data reference file*); Fig. 2, the user creates the control file; paragraph 38; the control file containing data such as solo pattern assignment; (*entering first reference data*); Fig. 2))

entering second reference data for the second soundtrack of the soundtrack data set file into the audio mix data reference file upon selecting the second soundtrack (the process above is done again for other instruments, such as drums, and bass; Fig. 2);

the audio mix data reference file having the first and second reference data representative of a user defined polyphonic audio mix (i.e. the control file is user created; paragraph 38 and Fig. 3),

the audio mix data reference file representative of a user defined polyphonic audio mix (i.e. the control file is user created; paragraph 38 and Fig. 3);

storing the audio mix data reference file on the handheld mobile wireless communication device (i.e. the MIDI file, control file or any combination is downloaded to the mobile device; paragraph 40).

Regarding **Claim 21**, in addition to the elements stated above regarding claim 18, Hruska further discloses:

Selecting the first soundtrack from a first plurality of soundtracks perceptible by a user of the handheld mobile wireless communication device, selecting the second

soundtrack form a second plurality of soundtracks perceptible by a user of the handheld mobile wireless device (paragraph 88).

Regarding **Claim 22**, in addition to the elements stated above regarding claim 18, Hruska further discloses:

at least one of the soundtracks is a reference soundtrack, selecting the reference soundtrack before selecting a subsequent soundtrack (the drum part still references a single MIDI instrument; paragraph 23; depending on when the users would input the drum selection, if it were first, which could be within the scope of Hruska's invention, the reference soundtrack would be selected before a subsequent soundtrack).

Regarding **Claim 23**, in addition to the elements stated above regarding claim 22, Hruska further discloses:

selecting at least one subsequent soundtrack while the reference soundtrack is playing, mixing the at least one subsequent soundtrack selected with the reference soundtrack upon selecting the subsequent soundtrack (i.e. users are allowed to rearrange which parts and which part patterns are playing at any given time, what MIDI instruments are assigned to the given parts and patterns, the tempo of the song, the volume of the parts and patterns, the notes of the parts and patterns and a variety of other MIDI effects such as note duration or hold, grace notes, pitch bend, chord creation, chord inversion, and accents; paragraph 20; and also see further paragraph 88.).

Regarding **Claim 24**, in addition to the elements stated above regarding claim 18, Hruska further discloses:

selecting the first soundtrack from a plurality of reference soundtracks each having corresponding rhythmic and harmonic characteristics (i.e. the soundtracks are selected from the solo, harmony, drum, and bass pattern in Fig. 1).

Regarding **Claim 25**, in addition to the elements stated above regarding claim 24, Hruska further discloses:

selecting the second soundtrack from a plurality of soundtracks having a corresponding melody (i.e. the soundtracks are selected from the solo, harmony, drum, and bass pattern in Fig. 1).

Regarding **Claim 26**, in addition to the elements stated above regarding claim 18, Hruska further discloses:

stopping the playing of the first soundtrack while the first and second soundtracks are playing (i.e. users are allowed to rearrange which parts and which part patterns are playing at any given time, what MIDI instruments are assigned to the given parts and patterns, the tempo of the song, the volume of the parts and patterns, the notes of the parts and patterns and a variety of other MIDI effects such as note duration or hold, grace notes, pitch bend, chord creation, chord inversion, and accents; paragraph 20; and also see further paragraph 88.).

Regarding **Claim 27**, in addition to the elements stated above regarding claim 18, Hruska further discloses:

selecting an audio characteristic for at least one of the selected soundtrack while playing the soundtrack for which the audio characteristic is selected, changing the audio characteristic of the selected soundtrack while the soundtrack is playing upon selecting the audio characteristic (i.e. users are allowed to rearrange which parts and which part patterns are playing at any given time, what MIDI instruments are assigned to the given parts and patterns, the tempo of the song, the volume of the parts and patterns, the notes of the parts and patterns and a variety of other MIDI effects such as note duration or hold, grace notes, pitch bend, chord creation, chord inversion, and accents; paragraph 20; and also see further paragraph 88.).

Regarding **Claim 28**, in addition to the elements stated above regarding claim 18, Hruska further discloses:

selecting a global audio characteristic common to all selected soundtrack while playing the selected soundtrack or which the global audio characteristic is selected, changing the audio characteristic of all selected soundtracks while the soundtracks are playing upon selecting the global audio characteristic (i.e. users are allowed to rearrange which parts and which part patterns are playing at any given time, what MIDI instruments are assigned to the given parts and patterns, the tempo of the song, the volume of the parts and patterns, the notes of the parts and patterns and a variety of

other MIDI effects such as note duration or hold, grace notes, pitch bend, chord creation, chord inversion, and accents; paragraph 20; and also see further paragraph 88.).

Regarding **Claim 29**, in addition to the elements stated above regarding claim 18, Hruska further discloses:

selecting the first soundtrack to play for a first time interval, selecting the second soundtrack to play for a second time interval different than the first time interval (users are allowed to rearrange which parts and which part patterns are playing at any given time; paragraph 20; and also see further paragraph 88.; and see Fig. 2).

Regarding **Claim 30**, Hruska discloses:

A method for creating a polyphonic audio mix on a handheld mobile wireless communication device (abstract), comprising:

playing a first soundtrack upon selecting the first soundtrack;
selecting an audio characteristic for the selected first soundtrack while playing the first soundtrack;

playing the selected audio characteristic of the first soundtrack while playing the first soundtrack upon selecting the audio characteristic (i.e. users are allowed to rearrange which parts and which part patterns are playing at any given time, what MIDI instruments are assigned to the given parts and patterns, the tempo of the song, the volume of the parts and patterns, the notes of the parts and patterns and a variety of

other MIDI effects such as note duration or hold, grace notes, pitch bend, chord creation, chord inversion, and accents; paragraph 20; and also see further paragraph 88.)

Regarding **Claim 31**, in addition to the elements stated above regarding claim 30, Hruska further discloses:

the first soundtrack is a reference soundtrack, selecting the first soundtrack from a plurality of different reference soundtracks (i.e. the drum part still references a single MIDI instrument; paragraph 23), selecting a second soundtrack from a plurality of non-reference soundtracks while the reference soundtrack is playing, playing the second soundtrack upon selecting the second soundtrack while the reference soundtrack is playing (i.e. if the drum soundtrack is considered to be the reference (i.e. main), the following will be selections non reference; Fig. 2, also users are allowed to rearrange which parts and which part patterns are playing at any given time, what MIDI instruments are assigned to the given parts and patterns, the tempo of the song, the volume of the parts and patterns, the notes of the parts and patterns and a variety of other MIDI effects such as note duration or hold, grace notes, pitch bend, chord creation, chord inversion, and accents; paragraph 20; and also see further paragraph 88.)

Regarding **Claim 32**, in addition to the elements stated above regarding claim 31, Hruska further discloses:

selecting the second soundtrack from a plurality of musical instrument soundtracks (Fig. 1).

Regarding **Claim 33**, in addition to the elements stated above regarding claim 30 Hruska further discloses:

stopping the playing of the first soundtrack, stopping the playing of the audio characteristic for the first soundtrack upon stopping the playing of the first soundtrack (i.e. users are allowed to rearrange which parts and which part patterns are playing at any given time, what MIDI instruments are assigned to the given parts and patterns, the tempo of the song, the volume of the parts and patterns, the notes of the parts and patterns and a variety of other MIDI effects such as note duration or hold, grace notes, pitch bend, chord creation, chord inversion, and accents; paragraph 20; and also see further paragraph 88.)

Regarding **Claim 34**, Hruska discloses:

A method for creating a polyphonic audio mix on a handheld mobile wireless communication device (abstract), comprising:

selecting a first soundtrack having a first time interval;

selecting a second soundtrack having a second time interval, the second time interval different than the first time interval (i.e. the selected tracks in Fig 2 are to be played at intervals depending on what the user wants depending on their set values; also see paragraph 24);

mixing the first and second soundtracks (i.e. the data parts are played back together and thus mixed and the output is depending on the control data in Fig. 2).

Regarding **Claim 35**, in addition to the elements stated above regarding claim 34, Hruska further discloses:

if the time interval of the first and second soundtracks overlaps, selecting the second soundtrack while the first soundtrack is playing and playing the second soundtrack with the first soundtrack upon selection of the second soundtrack (i.e. users are allowed to rearrange which parts and which part patterns are playing at any given time, what MIDI instruments are assigned to the given parts and patterns, the tempo of the song, the volume of the parts and patterns, the notes of the parts and patterns and a variety of other MIDI effects such as note duration or hold, grace notes, pitch bend, chord creation, chord inversion, and accents; paragraph 20; and also see further paragraph 88.)

Regarding **Claim 36**, in addition to the elements stated above regarding claim 34, Hruska further discloses:

saving an audio mix reference file corresponding to a polyphonic audio mix (i.e. the MIDI file, control file or any combination is downloaded to the mobile device; paragraph 40),

the audio mix reference file referencing the first and second soundtracks stored in a separate file (i.e. in Fig. 2, the control file references the various tracks which are stored in Fig. 1),

playing the polyphonic audio mix by referencing the first and second soundtracks with the audio mix reference file (i.e. once the music content data is on the mobile device the end user can initiate playback; paragraph 43).

Regarding **Claim 37**, Hruska discloses:

A method for creating a polyphonic audio mix on a handheld mobile wireless communication device (abstract), comprising:

playing a first soundtrack by selecting the soundtrack;

selecting one of a second soundtrack and an audio characteristic of the first soundtrack while playing first soundtrack;

if the second soundtrack is selected, playing the second soundtrack with the first sound upon selecting the second soundtrack without further input by user,

if the audio characteristic is selected, playing the audio characteristic of the first soundtrack upon selecting the audio characteristic while playing the first soundtrack without further input by user (i.e. users are allowed to rearrange which parts and which part patterns are playing at any given time, what MIDI instruments are assigned to the given parts and patterns, the tempo of the song, the volume of the parts and patterns, the notes of the parts and patterns and a variety of other MIDI effects such as note

duration or hold, grace notes, pitch bend, chord creation, chord inversion, and accents; paragraph 20; and also see further paragraph 88.)

(10) Response to Argument

Applicant alleges regarding the rejection of claim 1:

"Hruska does not disclose an audio mix data reference file having reference data, wherein the reference file is stored separately from the soundtrack data file. In Hruska, the sound track data files (musical patterns) are stored as part of the MIDI file"

Examiner respectfully disagrees. The audio mix data file as relied upon in the rejection is control grid data file shown in Fig. 2 of Hruska and on page 5 of the Final Office Action. The soundtrack data set file as relied upon the rejection is the soundtrack data set file in Hruska's Fig. 1. Hruska states that the MIDI sequence file and control file are created and then loaded onto a computer; para. 38. At this point, the two files are 'stored' onto the computer and are considered to be 'separate' as they are not yet combined. The section that appellant appears to be relying on in this argument is element (8) in para. 38 which states **optionally** the MIDI sequence data and control file **may** be combined and rendered into a standard MIDI file. However, it is clear that the combination of these two files is **optional**. Furthermore, the fact that Hruska discloses that these files are in fact combinable indicates their storage onto the computer is indeed separate. If it were not, there would be no reason to combine them as they would already be combined.

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Furthermore, Hruska further disclose that once the content author is satisfied with the musical results, they can save their data file(s) (e.g. the MIDI file (s), control data file(s) or any combination thereof and download them to the mobile device; para 40. Hruska goes on to further disclose that it is also possible that a standard set of control data is downloaded and stored in a mobile device by a manufacturer (as presets) and MIDI sequence data is downloaded **separately**; para. 40. Since any combination of them may be downloaded and it is also possible that they are downloaded separately, Hruska at least suggests that these files are stored separately.

Applicant alleges regarding the rejection of claim 5:

“Hruska... fails to disclose dynamic mixing of soundtracks wherein a second soundtrack is played upon selecting the second soundtrack while a first soundtrack is playing.”

Examiner respectfully disagrees. Hruska discloses that any of the parameters can be rearranged or changed during operation; para. 24. Hruska even further states specifically in para. 20 that “Users are allowed to rearrange what parts are playing at any given time.” It is submitted that since the user can rearrange what parts are playing at any given time, “selecting the second soundtrack while a first soundtrack is playing” is met. The user may select one part to be played (i.e. a first sound track) and then as Hruska states, rearrange to play another part (i.e. a second soundtrack) while the first part is being played.

Applicant alleges regarding the rejection of claim 6:

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"Hruska fails to disclose dynamic mixing of soundtrack wherein a second soundtrack effect is played upon selecting a second soundtrack effect while a first effect is playing."

Examiner respectfully disagrees. Hruska discloses that any of the parameters can be rearranged or changed during operation; para. 24. Hruska even further states specifically in para. 20 that "Users are allowed to rearrange what parts are playing at any given time, what MIDI instruments are assigned to the given parts, the tempo of the song the volume and other effects...; para 20. Since the user can rearrange these parts, including the various effects, at any given time, "a second soundtrack effect is played upon selecting a second soundtrack effect while a first effect is playing" is met. The user may select one part or effect to be played (i.e. a first effect playing) and then as Hruska states, rearrange the playback to select another effect (i.e. a second effect) while the first effect is playing.

Applicant allegations regarding the rejection of claim 10 are not persuasive for the same reasons stated above regarding the allegations as to claim 1.

Applicant alleges regarding the rejection of claim 14:

"Hruska does not disclose an audio mix data reference file devoid of soundtrack data from the soundtrack data set file. Thus Hruska cannot possibly integrate an audio mix data reference file and a soundtrack data set file into a single audio format file."

Examiner respectfully disagrees. The audio mix data reference file is the control grid data file shown in Fig. 2 of Hruska and on page 5 of the Final Office Action. This

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control file is **devoid** of soundtrack data from the sound track data set file. The Examiner interprets soundtrack data to be musical data. The soundtrack data set file (i.e. the MIDI sequence file) includes various musical data such as musical parts, patterns and channel assignments; Fig. 1. The control file does not include any musical data. It is merely a textual file that includes data on how to play back the information in the soundtrack data set file. Since it is nothing more than a text file, it cannot possibly contain soundtrack data. Hruska shows this in paras 25 – 36. The control file includes various patterns, for example the solo part includes an 'A' pattern. The musical information to playback this 'A' pattern is located in the MIDI sequence file as shown in Fig. 1.

Furthermore, Hruska does in fact integrate the MIDI sequence file (i.e. soundtrack data set file) and the control file (i.e. audio mix data reference file) into a single audio format file. Hruska discloses that the MIDI sequence data and control file may be combined and rendered into a standard MIDI file; para 38.

Applicant allegations regarding the rejection of claim 16 are not persuasive for the same reasons stated above regarding the allegations as to claim 14.

Applicant allegations regarding the rejections of claims 18, 30 and 37 are not persuasive for the same reasons stated above regarding the allegations as to claim 5.

Applicant alleges regarding the rejection of claim 34:

"Hruska does not disclose soundtracks having differing time intervals."

Examiner respectfully disagrees. This argument should fail for three reasons. First, Hruska discloses that users may play any particular musical pattern at any desired time; para 20. Since the patterns are played at a specific time, the soundtrack is played at a specific time interval, i.e. a first selected time interval for a first selected track and a second selected time interval for a second selected track.

Secondly, the musical patterns disclosed by Hruska can be played at various tempos; para 36. The $t=120$ indicates the song tempo. Thus changing the tempo inherently changes the speed of playback of a musical pattern thus changing the time interval in which it is played. Doing this for multiple musical patterns reads on the limitation of soundtracks having differing time intervals.

Thirdly, the musical patterns are played at different measures. In the example in paras 26 - 35, the solo includes the A pattern for 3 measures than the 'a' pattern for 1 measure. Playing the A pattern for 3 measures reads on a first time interval (i.e. 3 measures) and the 'a' pattern for 1 measure reads on a second time interval different from the first time interval (i.e. 1 measure which is different than 3 measures). Furthermore, the solo pattern is played at a specific time, the harmony pattern (h) is played at a specific time, the drum pattern (d) is played at a specific time, and the bass pattern (b) is played at a specific time. All of these patterns do not start and stop at exactly the same time (see the example). As a result, they are played at different times and are different lengths thus having differing intervals.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Andrew C. Flanders

Conferees:



BINH TRAN
SUPERVISORY PATENT EXAMINER



VIVIAN CHIN
SUPERVISORY PATENT EXAMINER
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